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**FOR PUBLICATION**

**IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**UNITED MICRONESIA  
DEVELOPMENT ASSOCIATION, INC.,  
and UMDA LAOLAO LLC,**  
  
**Plaintiffs,**  
  
**vs.**  
  
**ROBERT PFAFF, et at.,**  
  
**Defendants.**

**CIVIL ACTION NO. 07-0152**  
  
**ORDER GRANTING BIGELOW  
ASSET MANAGEMENT'S MOTION  
TO DISMISS FOR LACK OF  
PERSONAL JURISDICTION**

**I. INTRODUCTION**

THIS MATTER came before the Court on February 17, 2009 at 9:00 a.m. on Defendant Bigelow Asset Management's Motion to Dismiss for Lack of Personal Jurisdiction. Larry Katz, admitted *Pro Hac Vice*, appeared telephonically on behalf of Bigelow Asset Management (BAM). Colin Thompson appeared, as local counsel, on behalf of BAM. David Lujan, Kathy Freeman, Robert O'Connor and Rodney Jacob appeared on behalf of Plaintiff United Micronesia Development Association, Inc. (UMDA). Timothy Bellas appeared on behalf of Plaintiff UMDA LaoLao, LLC (UMDA LaoLao).

1 This Court having considered all pleadings, arguments, materials on record, and all  
2 relevant rules and case law, enters the following order: GRANTING Bigelow Asset  
3 Management's Motion to Dismiss for Lack of Personal Jurisdiction.  
4

## 5 II. FACTUAL BACKGROUND

6 Personal jurisdiction is alleged based on a series of events following UMDA's  
7 disbursement of \$676,000 to Sasquatch II (Sasquatch), which represented a 9.52% ownership  
8 interest in UMDA LaoLao. Following receipt of this payment, Sasquatch, through Mark  
9 Adams, the manager of one of Sasquatch's partners and the general counsel for BAM, notified  
10 the other entities that held ownership in UMDA LaoLao that Sasquatch had received payment.  
11 See BAM Reply 4; Pls.' Opp'n 5-6. In a flurry of emails between these entities, another  
12 defendant, Paul Dingee, ambiguously referred to Sasquatch by asking why "Bigelow" got a  
13 distribution while no one else did. Pls.' Opp'n 3. This prompted Defendant John Larson to ask  
14 Mark Adams to provide the details of the bank account where UMDA LaoLao sent the  
15 distribution from. Adams obtained that information from the wire Sasquatch received from  
16 UMDA LaoLao and forwarded it to Larson. Pls.' Opp'n 3-4. As a result, Larson ambiguously  
17 referred to Sasquatch in an email by stating the "Bigelows" got him the bank information. Pls.'  
18 Opp'n 4. Once the bank information was obtained, Larson began "the assault on Saipan,"  
19 where he and the other defendants attempted to replace UMDA as the manager of UMDA  
20 LaoLao with Paul Dingee. Pls.' Opp'n 3. Sasquatch joined this removal effort on April 27,  
21 2008 when Brian Bigelow, a partner in Sasquatch and a member of BAM, faxed Defendant Ray  
22 McCall a signed "Notice of Action by Written Approval by Members Holding More than One  
23 Half Voting Interests to Remove and Replace Manager." Pls.' Opp'n 4. The fax cover sheet  
24 bore the name "Bigelow Asset Management" and Brian Bigelow signed the document for  
25 "Sasquatch II by Bigelow Asset Management holding a 9.52% Voting Interest." *Id.* After the  
26 Bank of Hawaii alerted UMDA of the attempt to remove the funds in UMDA LaoLao's bank  
27 accounts, UMDA sought and was granted a temporary restraining order freezing the bank  
28 accounts. Pls.' Opp'n 4-5. The Court then granted UMDA's motion for preliminary injunction,

1 placing the disputed funds into Court controlled accounts, where the funds still remain. Pls.’  
2 Opp’n 5.

### 3 4 **III. MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

5 Defendant Bigelow Asset Management (BAM), has moved this Court, pursuant to Com.  
6 R. Civ. P. 12(b)(2) to dismiss Plaintiffs' claims against them for a lack of personal jurisdiction.

#### 7 8 **A. Standard**

9 Any defendant may move to dismiss claims against them for lack of *in personam* or  
10 'personal jurisdiction' under Commonwealth Rule of Civil Procedure 12(b)(2). On a motion to  
11 dismiss under Com. R. Civ. Pro. 12 (b)(2) the plaintiff bears the burden of establishing personal  
12 jurisdiction. *Waibel v. Farber*, 2006 MP 15 ¶ 12.

13 A 12(b)(2) motion challenging jurisdiction may be decided on affidavits or a court may  
14 take evidence at a preliminary hearing. *Data Disc., Inc. v. Sys Tec. Assoc., Inc.*, 557 F. 2d 1280,  
15 1285 (9th Cir. 1977) (the Commonwealth Supreme Court has relied heavily on *Data Disc* in  
16 several opinions dealing with personal jurisdiction, *see Bank of Saipan v. Superior Court*  
17 *(Connell)*, 2001 MP 1, 6 N.M.I. 179 (2001); *Bank of Saipan v. Superior Court (Attorneys'*  
18 *Liability Assurance Society, Inc.)*, 2001 MP 5, 6 N.M.I. 242 (2001)). The burden of proof  
19 varies depending on whether the motion is decided upon affidavits or upon evidence taken by  
20 preliminary hearing. *Data Disc.* at 1285. If decided upon affidavits, plaintiff need only make a  
21 prima facie showing of facts supporting jurisdiction. *Bank of Saipan (Connell)*, 2001 MP 1 ¶  
22 13, 6 N.M.I. at 185. If decided upon affidavits, all exhibits are viewed in a light most favorable  
23 to the plaintiff and all doubts are resolved in plaintiff's favor. *Id.* at ¶ 14, 6 N.M.I. at 185.  
24 Issues of credibility or disputed issues of fact may require an evidentiary hearing, where  
25 plaintiff must prove jurisdiction by a preponderance of the evidence. *Id.* at ¶ 13, 6 N.M.I. at 185  
26 (*citing Data Disc.* at 1285). A prima facie showing means that plaintiff has produced  
27 admissible evidence which, if believed, would be sufficient to establish the existence of  
28 personal jurisdiction. *Colt Studio, Inc. v. Badpuppy Enterprise*, 75 F. Supp. 2d 1104, 1107

1 (C.D. Cal. 1999). Therefore, plaintiff's prima facie showing must be made up of facts  
2 established by evidence which would be admissible under evidentiary rules. *Id.*

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4 B. Formula

5 Case law in the Commonwealth indicates a court must engage in a two part analysis to  
6 determine whether it may exercise personal jurisdiction over non-resident defendants. First, it  
7 must identify an applicable rule or statute conferring jurisdiction, and second, it must determine  
8 whether exercise of jurisdiction over the defendant comports with the constitutional principles  
9 of due process. *Bank of Saipan (Connell)*, 2001 MP 1 ¶ 21, 6 N.M.I. at 186; *Bank of Saipan*  
10 (*Attorneys' Liability*), 2001 MP 5 ¶ 36, 6 N.M.I. at 251.

11  
12 1. Statute

13 The Commonwealth's long arm statute provides for the exercise of jurisdiction over non-  
14 resident defendants, to the extent permitted by the federal Constitution,<sup>1</sup> when a cause of action  
15 arises from certain enumerated acts. Under the long arm statute, the courts of the  
16 Commonwealth hold jurisdiction when a cause of action arises from:

- 17 (1) The transaction of any business within the Commonwealth;  
18 (5) Causing tortious injury or damage within the Commonwealth by an act or  
19 omission done outside the Commonwealth by a person engaged in business or  
20 other acts having impact within the Commonwealth, or who derives income or  
21 revenue from supplying goods or services within the Commonwealth;  
22 (7) Any act done outside the Commonwealth which causes or results in any  
23 harmful impact, injury or damages, including pollution of air, land or water  
24 within the Commonwealth; or  
25 (8) Any other act done within or outside the Commonwealth from which a cause  
26 of action arises and for which it would not be unreasonable, unfair or unjust to  
27 hold the person doing the act legally responsible in a court of the  
28 Commonwealth.

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<sup>1</sup>See 7 CMC § 1102(e) (The legislature intends that jurisdiction under this section shall be coextensive with the minimum standards of due process as determined in the United States federal courts).

1 7 CMC § § 1102(a)(1), (5), (7-8); *Montecillo v. Di-All Chemical Co.*, App. No. 97-  
2 020 (N.M.I. Sup. Ct. Nov. 23, 1998); *Bank of Saipan (Connell)*, 2001 MP 1 ¶ 22, 6  
3 N.M.I. at 186. Section 1102 also holds an individual liable for the actions of an agent:

4 Any person, whether or not a citizen or resident of the Commonwealth, *who in*  
5 *person or through an agent* does any of the acts enumerated in this section,  
6 thereby submits such person, and, if not an individual, its personal  
7 representative, to the jurisdiction of the courts of the Commonwealth as to any  
8 cause of action arising from the doing of any of the following acts....

9 7 CMC § 1102(a)(Emphasis added); *see Bank of Saipan (Connell)* 2001 MP 1 ¶ 22, 6 N.M.I.  
10 at 186.

11 Here, Plaintiffs allege that BAM's agents' conduct in Colorado had an impact in the  
12 Commonwealth. Plaintiffs further allege that this impact resulted in tortious injury in the  
13 Commonwealth from which this cause of action arises. Taking Plaintiffs' allegations as true, the  
14 conduct of BAM's agents submits BAM to the jurisdiction of the Commonwealth courts under  
15 the far reaching Commonwealth long-arm statute.<sup>2</sup>

## 16 2. Due Process

17 The Due Process Clause of the Fourteenth Amendment to the United States Constitution  
18 imposes limitations on the power of a court to assert jurisdiction over a non-resident defendant.  
19 *Monticello v. Di-All Chem. Co.*, 5 N.M.I. 185, 186 (1998). Due process requirements are  
20 satisfied if a non-resident defendant has sufficient “minimum contacts” with the forum such that  
21 the exercise of jurisdiction over the defendant does not “offend traditional notions of fair play  
22 and substantial justice.” *Id.* (citing *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66  
23 S. Ct. 154, 158, 90 L. Ed. 95, 100 (1945)).

24 There are two categories of personal jurisdiction over non-resident defendants: general  
25 jurisdiction and specific jurisdiction. The extent and nature of the minimum contacts necessary  
26 and the associated due process analysis depends on the type of jurisdiction sought over the  
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28 <sup>2</sup> While both *Bank of Saipan* opinions focused on a two step process, the more recent opinion in *Waibel v. Farber*  
skirts the two part analysis and focuses primarily on the due process inquiry because the Commonwealth long arm  
statute is coextensive with due process. 2006 MP 15 ¶ 13; 7 CMC § 1102(e).

1 defendant. General jurisdiction is sought over a defendant based on “continuous and  
2 systematic” contacts with the forum such that the conduct constituting the plaintiff's claims can  
3 be unrelated to forum-related acts. *Bank of Saipan (Connell)*, 2001 MP 1 ¶ 26, 6 N.M.I. at 187;  
4 *Data Disc*, 557 F.2d at 1287. Specific jurisdiction is sought over a defendant for certain forum-  
5 related acts which are related to the subject matter of the underlying lawsuit. *Bank of Saipan*  
6 (*Attorneys’ Liability*), 2001 MP 5 ¶ 42.

7  
8 a. General Jurisdiction

9 “The basic rule is that the defendant must have certain minimal contacts with the forum  
10 such that the maintenance of the suit does not offend traditional notions of fair play and  
11 substantial justice.” *Data Disc*, 557 F.2d at 1287) (*citing International Shoe Co. v. Washington*,  
12 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95, 100 (1945)). However, the standard for  
13 general jurisdiction is “fairly high.” *Bank of Saipan (Attorneys’ Liability)*, 2001 MP 5 ¶ 41, 6  
14 N.M.I. at 252 (*citing Brand v. Menlove Dodge*, 796 F.2d 1070, 1073 (9th Cir. 1986)); *Waibel*,  
15 2006 MP 15 at ¶ 16. To assert general jurisdiction over a non-resident defendant requires  
16 “continuous and systematic” contacts with the forum. *Bank of Saipan (Attorneys’ Liability)*,  
17 2001 MP 5 ¶ 41. The reason for a high standard to assert general jurisdiction over a non-  
18 resident defendant is because it allows them to be “hailed into court regardless of whether the  
19 circumstances giving rise to the cause of action are related to the party's connections with the  
20 forum.” *Waibel*, 2006 MP 15 ¶ 16. This requires “engaging in and maintaining regular  
21 systematic relations with the forum state,” *id.*, such that an assertion of jurisdiction for non-  
22 forum related conduct would not offend traditional notions of fair play and substantial justice.  
23 *See Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 104 S. Ct. 1868, 80 L.  
24 Ed. 2d 404 (1984). In this case, there is a lack of purposeful and continuous business in the  
25 Commonwealth, as evidenced by the fact that BAM’s only alleged connection with the  
26 Commonwealth arose from the situation following the disbursement of funds to Sasquatch. *See*  
27 *Factual Background, supra*. Furthermore, Plaintiffs do not allege that there are sufficient  
28 contacts for this type of jurisdiction.

1                                   b. Specific Jurisdiction

2             If the non-resident defendant's activities do not subject him to general jurisdiction, the  
3 court may still exercise jurisdiction if the case arises out of certain forum-related acts. *See Data*  
4 *Disc.* at 1287; *Bank of Saipan (Attorneys' Liability)*, 2001 MP 5 ¶ 42, 6 N.M.I. at 252. The  
5 Commonwealth Supreme Court, adopting the approach of the Ninth Circuit, has held that  
6 specific jurisdiction is established by demonstrating: (1) through purposeful actions the  
7 defendant has established adequate contacts with the Commonwealth so as to reasonably expect  
8 being hauled into court in the Commonwealth; (2) the action arose through these contacts; and  
9 (3) jurisdiction is otherwise reasonable. *Waibel*, 2006 MP 15 ¶ 17 (citing *Bank of Saipan*  
10 *(Attorneys' Liability)*, 2001 MP 5 ¶ 42, 6 N.M.I. at 252); *see also Bank of Saipan (Connell)*,  
11 2001 MP 1 ¶ 26, 6 N.M.I. at 187; *Data Disc*, 557 F.2d 1280, 1287 (1977). If any prong fails,  
12 the court cannot assert jurisdiction over the non-resident defendant. *Waibel*, 2006 MP 15 ¶ 17  
13 (finding if prong number one fails, the court need not discuss prongs two or three).

14  
15                                   C. Discussion

16             Plaintiffs must first establish the purposeful availment and foreseeability element of the  
17 Ninth Circuit's test for specific jurisdiction. Purposeful availment ensures that a defendant will  
18 not find itself before a particular court solely because of the "unilateral activity of another party  
19 or a third person." *Burger King v. Rudzewicz*, 471 U.S. 462, 475, 105 S. Ct. 2174, 2183-2184,  
20 285 L. Ed. 2d 528, 542 (1985). Purposeful availment also requires more than "'random,'  
21 'fortuitous,' or 'attenuated' contacts'" with the forum state. *Bank of Saipan (Connell)*, 2001 MP 1  
22 ¶26 (citing *Burger King*, 471 U.S. at 475, 105 S. Ct. at 2183, 85 L. Ed. at 542). Part of the  
23 purposeful availment analysis requires an inquiry into whether it is foreseeable that the  
24 defendant, through purposeful actions, might reasonably expect to be hauled into a court of the  
25 foreign jurisdiction. *Waibel*, 2006 MP 15 ¶ 18.

26             In this case, the alleged contacts between BAM and the Commonwealth include: the  
27 sharing of UMDA LaoLao's bank account information between Mark Adams, BAM's general  
28 counsel, and other defendant entities; representatives for these entities referring ambiguously to

1 Sasquatch as the “Bigelows” in email correspondence; and the faxing, with a fax cover sheet  
2 baring the name Bigelow Asset Management, of a “Notice of Action by Written Approval by  
3 Members Holding More than One Half Voting Interests to Remove and Replace Manager”  
4 signed by Brian Bigelow for “Sasquatch II by Bigelow Asset Management holding a 9.52%  
5 Voting Interest.” Factual Background, *supra*.

6         There is however, ample evidence that BAM has no contacts with the Commonwealth.  
7 Mark Adams, while serving as BAM’s general counsel, is also the personal manager for one of  
8 the partners of Sasquatch and thus has the authority to act on behalf of Sasquatch. BAM Reply  
9 4. Brian Bigelow, a partner of both Sasquatch and a member of BAM, submitted through  
10 affidavit that Sasquatch uses the Denver, Colorado address of BAM and correspondence for  
11 Sasquatch may be sent to BAM. Decl. Colin Thompson Supp. Def. BAM Mot. Dismiss, Ex. B.  
12 at 2. Therefore it is reasonable that the fax cover sheet entitled Bigelow Asset Management and  
13 the Notice of Action signed by Brian Bigelow for “Sasquatch II by Bigelow Asset  
14 Management” was simply a mistake overlooked by Brian Bigelow as asserted by BAM. *See*  
15 BAM Reply 5. Furthermore, the use of “Bigelows” in reference to Sasquatch is ambiguous as  
16 to whether the term references BAM, one of the three partners of Sasquatch with the last name  
17 Bigelow, or all three of the partners of Sasquatch with the last name Bigelow. *Id.* at 3.

18         Even construing the facts in a light most favorable to Plaintiffs, as the Court is required  
19 to do at this point, the Court does not find that BAM has purposefully availed itself through  
20 purposeful actions to establish adequate contacts with the Commonwealth so as to reasonably  
21 expect being hauled into court in the Commonwealth. The Court is not convinced, as Plaintiffs  
22 assert, that BAM “‘purposely directed’ activities at UMDA and UMDA LaoLao, residents of  
23 the CNMI, and that UMDA’s claimed injuries ‘arise out of or relate to’ Bigelow’s activities.”  
24 Pls.’ Opp’n 11. Plaintiffs contend that BAM provided “key information needed to spirit away  
25 the disputed funds” from UMDA LaoLao’s bank accounts. Pls.’ Opp’n 4. Regardless of his  
26 status as general counsel for BAM, Mark Adams had authority to act on behalf of Sasquatch  
27 when he shared this information. Since Sasquatch received the disbursement and Sasquatch had  
28 UMDA LaoLao’s bank account information, not BAM, the Court finds that Mark Adams acted



1 in his authority for Sasquatch to share that information, as stated in Mark Adams affidavit, and  
2 Plaintiffs have failed to provide any evidence to the contrary. Plaintiffs assert that BAM has at  
3 best created a dispute of fact which must be resolved in Plaintiff's favor; however whether or  
4 not Mark Adams had the authority to act on behalf of Sasquatch cannot be disputed.

5         Additionally, Brian Bigelow faxing the Notice of Action under a fax cover sheet entitled  
6 Bigelow Asset Management and signing it for "Sasquatch II by Bigelow Asset Management  
7 holding a 9.52% Voting Interest" does not purposefully avail BAM to the Commonwealth's  
8 jurisdiction. These actions, taken alone, do not submit BAM to the Commonwealth's  
9 jurisdiction because BAM had no legal authority to act on behalf of Sasquatch. BAM neither  
10 owns an interested in Sasquatch nor in UMDA LaoLao. BAM Reply 3, 5. Even though the  
11 Notice of Action was signed by Brian Bigelow for "Sasquatch II by Bigelow Asset  
12 Management holding a 9.52% Voting Interest," BAM could not reasonably expect to be hauled  
13 into a Commonwealth court because it has no ownership in Sasquatch and no authority to sign  
14 the Notice of Action.

15         Finally, BAM cannot be held liable for Defendants Larson and Dingee referring to  
16 Sasquatch as the Bigelows. Even if these defendants thought BAM and Sasquatch were the  
17 same entities, their assumptions do not purposefully avail BAM to the Commonwealth because  
18 the "unilateral activity of another party" is not enough to bring a defendant before a particular  
19 court. *See Rudzewicz*, 471 U.S. at 475, 105 S. Ct. at 2183-2184, 285 L. Ed. 2d at 542.  
20 Therefore, the ambiguous referencing of the "Bigelows" is not a sufficient contact for the  
21 Commonwealth to hold specific jurisdiction over BAM.

22         The Court finds that personal jurisdiction over BAM fails for a lack of sufficient  
23 contacts with the Commonwealth. BAM has not purposefully availed itself to the jurisdiction  
24 of the Commonwealth and it is not foreseeable, through any actions by BAM, that BAM would  
25 reasonably expect to be brought to court in the Commonwealth. Under *Waibel*, if a court finds  
26 that the defendant has not established adequate contacts with the Commonwealth through  
27 purposeful actions so as to reasonably expect being hauled into court in the Commonwealth,  
28 prongs two and three of the Ninth Circuit's test need not be addressed. *See Waibel*, 2006 MP 15

